

House Bill 263

By: Representatives Chambers of the 81st, Knox of the 24th, Coan of the 101st, Ehrhart of the 36th, Smith of the 131st, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to
2 repeal the certificate of need program: to provide for legislation findings; to repeal Chapter
3 6 regarding State Health Planning and Development; to eliminate references to the certificate
4 of need program; to remove the requirement for a certificate of need for certain facilities; to
5 amend Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating
6 to medical assistance generally, so as to eliminate reference to interest on penalties related
7 to certificate of need; to amend Chapter 26 of Title 50 of the Official Code of Georgia
8 Annotated, relating to housing and finance authority, so as to remove the requirement for a
9 certificate of need of a project financed by an authority; to provide for related matters; to
10 repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 The General Assembly finds and declares that:

- 14 (1) The Georgia Constitution prohibits the General Assembly from authorizing
15 agreements which defeat or lessen competition or encourage monopolies;
16 (2) The Federal Trade Commission and U.S. Department of Justice have determined that
17 vigorous competition promotes the delivery of high quality, cost-effective health care;
18 certificate of need programs pose anticompetitive risks that outweigh their economic
19 benefits; certificate of need programs foster anticompetitive barriers to market entry;
20 certificate of need programs prevent market entry by those that could provide higher
21 quality services and delay innovation; and states should decrease barriers to health care
22 market entry and reconsider whether certificate of need programs best serve their
23 citizens' health care needs;
24 (3) The Federal Trade Commission has stated Georgia's certificate of need program is
25 contrary to the interests of Georgia's health care consumers;

(4) Georgia's State Commission on the Efficacy of the Certificate of Need Program, the Federal Trade Commission, and the U.S. Department of Justice note the benefits of ambulatory surgery, such as convenience for patients in a less threatening and noninstitutional environment, specialized staff, and proven cost efficiencies;

(5) In addition to the benefits of ambulatory surgery centers, the Federal Trade Commission and U.S. Department of Justice warn that hospitals use certificate of need programs to restrict ambulatory surgery centers' entry into the health care market, and the Eleventh Circuit of the United States Court of Appeals has warned that Georgia's certificate of need program fosters anticompetitive practices and facilitates illegal cartels among hospitals;

(6) The data analyst for the State Commission on the Efficacy of the Certificate of Need Program reported that Georgia has one of the most rigorous certificate of need programs, states with rigorous certificate of need programs have less competition, and less competition is associated with higher cost;

(7) The State Commission on the Efficacy of the Certificate of Need Program reported certificates of need do not assure quality, and the commission's data analyst found no correlation between certificate of need programs and quality; and

(8) It is the intent of this Act to repeal Georgia's certificate of need law so as to promote the delivery of high quality, cost-effective health care through free market competition.

SECTION 2.

Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by repealing Chapter 6, relating to state health planning and development, and designating such chapter as reserved.

SECTION 3.

Said title is further amended by revising subsection (d) of Code Section 31-5A-5, relating to transfer of personnel and functions relating to health care to the Department of Community Health, as follows:

"(d) The department shall succeed to all rules, regulations, policies, procedures, and administrative orders of the predecessor agencies which were in effect on June 30, 1999, or scheduled to go into effect on or after July 1, 1999, and which relate to the functions transferred to the department by this chapter. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by proper authority or as otherwise provided by law. Rules of the department shall be adopted, promulgated, and implemented as provided in Chapter 13 of Title 50, the

1 'Georgia Administrative Procedure Act,' ~~except that only the Division of Health Planning~~
2 ~~shall be subject to the provisions of Code Section 31-6-21.1."~~

3 **SECTION 4.**

4 Said title is further amended by revising Code Section 31-7-75.3, relating to home health
5 agency services operated by hospitals, as follows:

6 "31-7-75.3.

7 A hospital authority which owns or operates a hospital which is qualified to provide home
8 health agency services ~~under the exemption provided in paragraph (14.1) of subsection (a)~~
9 ~~of Code Section 31-6-47~~ shall be authorized to exercise such powers under this article."

10 **SECTION 5.**

11 Said title is further amended by revising paragraph (1) of subsection (e) of Code Section
12 31-7-94.1, the "Rural Hospital Assistance Act," as follows:

13 "(1) Infrastructure development, including, without being limited to, facility renovation
14 or equipment acquisition; provided, however, that ~~the amount granted to any qualified~~
15 ~~hospital may not exceed the expenditure thresholds that would constitute a new~~
16 ~~institutional health service requiring a certificate of need under Chapter 6 of this title and~~
17 the grant award may be conditioned upon obtaining local matching funds;".

18 **SECTION 6.**

19 Said title is further amended by revising subsection (i) of Code Section 31-7-116, relating
20 to provisions contained in obligations and security for obligations, procedures for issuance
21 of bonds and bond anticipation notes, interest rates, and limitations and conditions, as
22 follows:

23 "(i) No bonds or bond anticipation notes except refunding bonds shall be issued by an
24 authority under this article unless its board of directors shall adopt a resolution finding that
25 the project for which such bonds or notes are to be issued will promote the objectives stated
26 in subsection (b) of Code Section 31-7-111 and will increase or maintain employment in
27 the territorial area of such authority. Nothing contained in this Code section shall be
28 construed as permitting any authority created under this article or any qualified sponsor to
29 finance, construct, or operate any project without obtaining any ~~certificate of need or other~~
30 approval, permit, or license which, under the laws of this state, is required in connection
31 therewith."

SECTION 7.

Said title is further amended by revising Code Section 31-7-155, relating to certificates of need for new service or extending service area and exemption from certificate, as follows:

"31-7-155.

~~(a) No home health agency initiating service or extending the range of its service area shall be licensed unless the Department of Community Health determines, in accordance with Article 3 of Chapter 6 of this title and regulations pursuant thereto, that there is a need for said services within the area to be served. All home health agencies which were delivering services prior to July 1, 1979, and were certified for participation in either Title XVIII or Title XIX of the federal Social Security Act prior to such date shall be exempt from a certificate of need, except in those instances where expansion of services or service areas is requested by such home health agencies. Such exemption from a certificate of need shall extend to all areas in which a home health agency was licensed by the department to provide services on or before December 31, 1989, except as provided in subsection (b) of this Code section.~~

~~(b) Concerning an exemption from a certificate of need pursuant to subsection (a) of this Code section, service areas which were the subject of litigation pending in any court of competent jurisdiction, whether by way of appeal, remand, stay, or otherwise, as of December 31, 1989, shall not be so exempt except as set forth in the final unappealed administrative or judicial decision rendered in such litigation.~~

~~(c) Except with respect to a home health agency's service areas which were the subject of litigation pending in any court of competent jurisdiction as of December 31, 1989, the Department of Community Health shall not consider any request for or issue a determination of an exemption from a certificate of need pursuant to this Code section after December 31, 1989. Reserved."~~

SECTION 8.

Said title is further amended by repealing in its entirety Code Section 31-7-179, relating to certificate of need not required, which reads as follows:

"31-7-179.

Where a hospice has obtained a license from the department, there shall be no requirement that the hospice obtain a certificate of need in order to provide any hospice care."

SECTION 9.

Said title is further amended by revising Code Section 31-7-307, relating to certificate of need not required of licensees and operation of home health agency not authorized, as follows:

1 "31-7-307.

2 ~~(a) A certificate of need issued pursuant to Chapter 6 of this title is not required for any~~
3 ~~person, business entity, corporation, or association, whether operated for profit or not for~~
4 ~~profit, which is operating as a private home care provider as long as such operation does~~
5 ~~not also constitute such person, entity, or organization operating as a home health agency~~
6 ~~or personal care home under this chapter.~~

7 ~~(b)~~ A license issued under this article shall not entitle the licensee to operate as a home
8 health agency, as defined in Code Section 31-7-150, under medicare or Medicaid
9 guidelines."

10 SECTION 10.

11 Said title is further amended by revising Code Section 31-8-153.1, relating to irrevocable
12 transfer of funds to trust fund and provision for indigent patients, as follows:

13 "31-8-153.1.

14 After June 30, 1993, any hospital authority, county, municipality, or other state or local
15 public or governmental entity is authorized to transfer moneys to the trust fund. Transfer
16 of funds under the control of a hospital authority, county, municipality, or other state or
17 local public or governmental entity shall be a valid public purpose for which those funds
18 may be expended. ~~The department is authorized to transfer to the trust fund moneys paid~~
19 ~~to the state by a health care facility as a monetary penalty for the violation of an agreement~~
20 ~~to provide a specified amount of clinical health services to indigent patients pursuant to a~~
21 ~~certificate of need held by such facility.~~ Such transfers shall be irrevocable and shall be
22 used only for the purposes contained in Code Section 31-8-154."

23 SECTION 11.

24 Said title is further amended by revising Code Section 31-8-181, relating to individuals and
25 hospitals excluded from application of article, as follows:

26 "31-8-181.

27 This article shall not apply to the following:

- 28 (1) An individual licensed to practice medicine under the provisions of Chapter 34 of
29 Title 43, and persons employed by such an individual, provided that any nursing home,
30 personal care home as defined by Code Section ~~31-6-2~~ 31-7-12, hospice as defined by
31 Code Section 31-7-172, respite care service as defined by Code Section 49-6-72, adult
32 day program, or home health agency owned, operated, managed, or controlled by a
33 person licensed to practice medicine under the provisions of Chapter 34 of Title 43 shall
34 be subject to the provisions of this article; or

(2) A hospital. However, to the extent that a hospital's nursing home, personal care home as defined by Code Section ~~31-6-2~~ 31-7-12, hospice as defined by Code Section 31-7-172, respite care service as defined by Code Section 49-6-72, adult day program, or home health agency holds itself out as providing care, treatment, or therapeutic activities for persons with Alzheimer's disease or Alzheimer's related dementia as part of a specialty unit, such nursing home, personal care home, hospice, respite care service, adult day program, or home health agency shall be subject to the provisions of this article."

SECTION 12.

Article 7 of Chapter 4 of Title 49 of the Official Code of Georgia Annotated, relating to medical assistance generally, is amended by revising subsection (b) of Code Section 49-4-147.2, relating to noneligibility of the Department of Community Health to obtain nor be liable for interest on orders, judgments, and liquidated or nonliquidated amounts, and exemptions, as follows:

"(b) Notwithstanding the provisions of Code Section 7-4-12, 7-4-15, 7-4-16, or 13-6-13, or any other statute or judicial construction thereof authorizing interest, the department shall not be eligible to obtain nor be liable for interest on orders, judgments, liquidated amounts, or unliquidated amounts unless such interest is:

(1) Required by federal law or regulations;

(2) Interest on penalties as required by Code Section 49-4-146.1; or

(3) Interest as required by Code Section 49-4-148; ~~or~~

~~(4) Incurred by a failure to pay the penalty which may be transferred to the Indigent Care Trust Fund under Code Section 31-8-153.1 within 30 days after the penalty is imposed, in which event interest shall be paid from the thirty-first day following such imposition at the same rate as interest on penalties under Code Section 49-4-146.1."~~

SECTION 13.

Chapter 26 of Title 50 of the Official Code of Georgia Annotated, relating to housing and finance authority, is amended by striking in its entirety subsection (c) of Code Section 50-26-19, relating to financing acquisition, construction, and equipping of health care facilities, which reads as follows:

"(c) The authority may not finance a project for any participating provider unless the Department of Community Health, or any successor thereof, has issued a certificate of need or comparable certification of approval to the participating provider for the project to be financed by the authority if the acquisition of such project by the participating provider

1 would require a certificate of need or comparable certification of approval under Chapter
2 6 of Title 31."

3 **SECTION 14.**

4 All laws and parts of laws in conflict with this Act are repealed.